IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 255 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

BHARAT LINDERS PVT. LTD.

Appearance:
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 23/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred the

following question of law for the opinion of this Court in respect of assessment year 1980-81 :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the investment allowance and depreciation should be allowed on the capitalized value of drawings and specifications ?"

2. The assessee is a Company. It claimed the depreciation and investment allowance on drawings and specifications. The ITO rejected the claim of the assessee. On appeal, the CIT(A), following the decision of the Gujarat High Court in the case of CIT, Gujarat-II vs. Elecon Engineering Co. Ltd., (1974) 96 ITR 672 allowed the claim of the assessee. On further appeal filed by the revenue, the Tribunal following the above quoted decision of the Gujarat High Court confirmed the order of the CIT(A) and dismissed the appeal of the revenue. Thereupon, reference application was made by the revenue and the question which is quoted above has been referred to us for our opinion.

3. The learned counsel for the parties state at the Bar that the controversy raised in the present reference is concluded by the decision of the Supreme Court in Scientific Engineering House P. Ltd. vs. CIT, (1986) 157 ITR 86 which is followed by the Supreme Court in CIT, Gujarat vs. Elecon Engineering Co. Ltd., (1987) 166 ITR 66. In the above quoted decisions, it is held that the drawings and patterns were books and since books were comprehended within the definition of `plant' in section 43(3) of the Income Tax Act, 1961, they were plant and depreciation was allowance in relation to the drawings and patterns.

4. Having regard to the principle enunciated by the Supreme Court in the above referred to decisions, we hold that the Tribunal was right in coming to the conclusion that the investment allowance and depreciation should be allowed on the capitalized value of drawings and specifications.

The reference is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue. The reference stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-